



CITY OF HOUSTON

Legal Department

Post Office Box 1562 Houston, Texas 77251-1562 713/247-2000

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APR 15 93

Opinion Committee
April 9, 1993

FILE #

I.D.#

CM RRR P 994 793 208

The Honorable Dan Morales
Attorney General of Texas
209 W. 14th Street
Price Daniel Sr. Building
Austin, Texas 78701

Re: TORA request from The Houston Post for records relating to proposed legislation relating to certain hotel facilities

Dear General Morales:

Attached is the original request (attached as Exhibit A) from Kate Thomas of The Houston Post, received March 30, 1993. Although we have provided some records responsive to the request (see copy of letter, attached as Exhibit B), the City of Houston requests an opinion from your office in regard to other records as discussed below.

We believe the information attached hereto as Exhibit C is exempt from public exposure under Section 3(a)(6) of the Open Records Act because it consists of drafts and working papers involved in the preparation of proposed legislation. Since the drafts and working papers are not in final form and were not intended to be released to the public since they may or may not reflect the City of Houston's strategies or plans in regard to this matter, we believe that those documents included in Exhibit C are expressly excepted by Section 3(a)(6) of the Texas Open Records Act.

Additionally, it is important to note that much of the attached correspondence is from Vinson & Elkins, a private law firm that represents the Houston Downtown Management Corporation in connection with the proposed legislation, not the City of Houston. We believe that it would be irresponsible for the City of Houston

to disclose such correspondence since it was prepared on behalf of an entity other than the City of Houston and was sent to the City in confidentiality.

We believe the information attached hereto as Exhibit D is exempt from public exposure under Section 3(a)(7) of the Open Records Act because it consists of attorney work product that is prohibited from disclosure pursuant to the Rules and Canons of Ethics of the State Bar of Texas. This information is also exempt from disclosure by the lawyer-client privilege (Rule 503, Texas Rules of Evidence) since a "client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client. . . ."

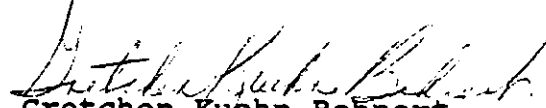
It is our opinion that the information attached hereto as Exhibit E is exempt from public exposure under Sections 3(a)(6), (3(a)(7) and 3(a)(11) of the Open Records Act because it consists of:

1. Proposed legislation--Section 3(a)(6) protects drafts of legislation that reflect policy judgments, recommendations, and proposals prepared by persons with some official responsibility to prepare them for the legislative body. Open Records Decision No. 429 (1985) at 5.;
2. Attorney work product that is prohibited from disclosure pursuant to the Rules and Canons of Ethics of the State Bar of Texas; and
3. Inter-agency or intra-agency memoranda which would not be available by law to a party in litigation with the City. Further, as stated in Open Records Decision No. 538 (1990), "[i]t is well established that the purpose of section 3(a)(11) is to protect from public disclosure advice, opinion, and recommendation used in the decisional process within an agency or between agencies. This protection is intended to encourage open and frank discussion in the deliberative process. See, e.g., Austin v. City of San Antonio, 630 S.W.2d 391, 394 (Tex.App.--San Antonio 1982, writ ref'd n.r.e.); Attorney General Opinion H-436 (1974); Open Records Decision No. 470 (1987)."

April 9, 1993
The Honorable Dan Morales
Page 3

We respectfully request your opinion as to whether the information enclosed should be released. Please let us know if anything further is required.

Very truly yours,


Gretchen Kuehn Bohnert
Assistant City Attorney

cc: Dawn Ullrich

Enclosures
tora.response